

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Elizabeth Johnson	Team: Team # 6	CCRB Case #: 201002990	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/04/2010 10:20 PM	Location of Incident: § 87(2)(b)	Precinct: 103	18 Mo. SOL 9/4/2011	EO SOL 9/4/2011	
Date/Time CV Reported Sun, 03/07/2010 12:14 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 03/07/2010 10:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Burt Antoine	23618	939877	113 PCT
2. SGT Robert Bracero	00598	924973	113 PCT
3. Officers			

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Discourtesy: Officers spoke obscenely to § 87(2)(b)	
B.POM Burt Antoine	Force: PO Burt Antoine pointed his gun at § 87(2)(b)	
C.SGT Robert Bracero	Abuse: Sgt. Robert Bracero threatened § 87(2)(b) with the use of force.	

Case Summary

On March 7, 2010, § 87(2)(b) reported this complaint to the CCRB via the on-line website (encl. 4a-e). On March 7, 2010, the CCRB received the complaint (encl. 5a-c). On March 4, 2010, at approximately 10:20pm, § 87(2)(b) interacted with officers in front of their home, located at § 87(2)(b) in Queens. The following allegations resulted:

Allegation A – Discourtesy: Officers spoke obscenely to § 87(2)(b)

Allegation B – Force: PO Burt Antoine pointed his gun at § 87(2)(b)

Allegation C – Abuse of Authority: Sgt. Robert Bracero threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black male who is 5'11" and 270 pounds with black hair and brown eyes.

CCRB Testimony

On March 15, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 6a-f). On March 4, 2010, at approximately 10:20pm, § 87(2)(b) was driving westbound on § 87(2)(b) in Queens, was returning to his home, located at § 87(2)(b) in Queens. § 87(2)(b) was operating his black 2007 Chrysler Aspen SUV, registered under his name, with license plate number § 87(2)(b). The vehicle also has 20 percent tint in the rear windows, as was produced by the factory, and § 87(2)(b) had 20 percent tint applied to his side windows, all of which were down at the time he was driving.

As § 87(2)(b) drove, he spoke to his friend § 87(2)(b) on his blue tooth headset. He was driving between 8 and 12 miles per hour, and as he approached § 87(2)(b) he noticed a silver unmarked vehicle had pulled over a car. § 87(2)(b) saw two uniformed officers, identified through the investigation as PO Burt Antoine and Sgt. Robert Bracero of the 113th Precinct, laughing outside of the vehicle. As he passed, § 87(2)(b) made eye contact with the officers. § 87(2)(b) described PO Antoine as a black male who was approximately 5'5" to 5'6" with a slim, muscular build, and appeared to be in his mid to late twenties. He had short even black hair. § 87(2)(b) described Sgt. Bracero as a white male with a tan complexion, who was approximately 5'10" with a medium build and appeared to be in his thirties. He had a bald head that appeared to be shaved in the back, and naturally bald on top.

Once at the intersection, § 87(2)(b) made a right turn through the green light and continued to drive on § 87(2)(b). As he approached the first red light, § 87(2)(b) stopped his vehicle, and noticed in his rearview mirror that the unmarked car was approaching his vehicle from behind, with it's lights on. As the traffic light turned green, § 87(2)(b) continued to drive, as he did not believe the officers were indicating that he stop. § 87(2)(b) continued on § 87(2)(b) and stopped at the next two red traffic lights. At each stop, § 87(2)(b) observed that the unmarked vehicle pull up directly behind his vehicle and signaled the siren. § 87(2)(b) hung up the phone and continued approximately one and half blocks to the third traffic light and stopped. The unmarked vehicle continued to follow him and again signaled the siren. Due to a previous incident in 2009 involving his son, § 87(2)(b) decided that he should pull over at a safe location, and determined that he would drive approximately eight to nine blocks to his home,

located at § 87(2)(b) in Queens. § 87(2)(b) believed that each time he stopped at a traffic light, PO Antoine and Sgt. Bracero had an opportunity to exit their vehicles and stop him, further persuading him to continue to his home.

Upon reaching his home, § 87(2)(b) pulled into his driveway and turned on the lights inside his vehicle. He reached over to the passenger's seat, where he had a bag of Arizona Tea bottles, and also reached for his phone in the middle console. § 87(2)(b) exited his vehicle with only his cell phone and keys in his hand, and observed the unmarked vehicle pulling up abruptly in his neighbor's driveway, directly next to his. PO Antoine and Sgt. Bracero exited the vehicle. PO Antoine screamed at § 87(2)(b) "Put your hands on the fucking car." From approximately nine to ten feet away, PO Antoine had a flashlight directed in § 87(2)(b)'s face. § 87(2)(b) told PO Antoine, "Calm down man, I didn't do anything," but did not comply in putting his hands on the vehicle. PO Antoine continued to scream at § 87(2)(b) to put his hands on the vehicle, upon which § 87(2)(b) noticed that PO Antoine had his gun drawn and pointed at his head. § 87(2)(b) said, "Whoa, you've got a gun." PO Antoine told § 87(2)(b) "Turn the fuck around. Get your hands on the mother fucking car." § 87(2)(b) asked PO Antoine, "Please calm down. You have a gun, please calm down." PO Antoine responded, "Okay, you're right. You're very calm, and since you're calm, I don't know why I'm yelling. You're right," and holstered his gun." § 87(2)(b) stated that he noticed that Sgt. Bracero was also screaming, but because his attention was focused on speaking with PO Antoine, he was unable to recall what Sgt. Bracero was saying. § 87(2)(b) later realized that Sgt. Bracero was giving him instructions to place his hands on the vehicle, and acknowledged that Sgt. Bracero may have perceived him as noncompliant.

PO Antoine asked § 87(2)(b) why had not pulled over, and § 87(2)(b) asked why they had decided to pull him over. PO Antoine informed him that his rear taillight was not operating. Sgt. Bracero screamed at § 87(2)(b) to "Put your fucking hands on the fucking car." § 87(2)(b) told Sgt. Bracero that he was speaking with PO Antoine, upon which Sgt. Bracero again screamed, "Put your fucking hands on the fucking car" and removed his asp from his holster and extended it. § 87(2)(b) complied and placed his hands on the vehicle.

Sgt. Bracero applied handcuffs to § 87(2)(b) and conducted a frisk by patting down his outer garments, beginning at the ankles upward. § 87(2)(b) stated that Sgt. Bracero did not enter his pockets. § 87(2)(b)'s wife, § 87(2)(b) exited his home, and approximately seven to eight neighbors exited their homes and watched from the vicinity. § 87(2)(b) stated that his neighbors did not approach, with the exception of § 87(2)(b) who crossed the street and asked the officers why § 87(2)(b) was being arrested. § 87(2)(b) also asked the officers why they were arresting § 87(2)(b) but PO Antoine and Sgt. Bracero ignored them. § 87(2)(b) became upset and amplified her voice, prompting Sgt. Bracero to instruct her to get back.

A marked patrol car arrived, and two unidentified uniformed officers (PO1 and PO2) exited. PO1 and PO2 were white males who were approximately 5'8" to 5'10" with medium to husky builds, and appeared to be in their thirties. § 87(2)(b) was informed later by neighbors that additional unmarked vehicles arrived, but he did not observe these vehicles during the incident. As § 87(2)(b)'s neighbors began exiting their homes, Sgt. Bracero appeared to find it urgent that they leave the location and instructed the officers to place § 87(2)(b) in the marked patrol car. § 87(2)(b) was not prepared to walk towards the vehicle and began to stumble. He acknowledged that the officers may have perceived him as resistant, but denied that he resisted their attempts to escort him to or place him in the vehicle. § 87(2)(b) instructed his wife to call § 87(2)(b) who is a retired detective from the 103rd Precinct. PO Antoine, PO1 and PO2 grabbed § 87(2)(b) by the arms, and may have been assisted by additional officers, for whom § 87(2)(b) was unable to provide physical descriptions, in pushing him in the vehicle.

As § 87(2)(b)'s keys were still in his hand, he slid them in his pocket. Sgt. Bracero asked § 87(2)(b) what he had placed in his pocket, which § 87(2)(b) explained. Sgt. Bracero frisked § 87(2)(b)'s pocket by patting the outside to confirm that he had placed keys in his pocket. As PO Antoine began to close the door, Sgt. Bracero opened the door and removed § 87(2)(b)'s keys from his pocket. He then ran towards § 87(2)(b)'s vehicle and told his wife, "And I'm taking the car." Sgt. Bracero drove § 87(2)(b)'s vehicle away.

PO1 and PO2 transported § 87(2)(b) to the 113th Precinct. § 87(2)(b) was charged with disorderly conduct, evading police officers, and an inactive car device. § 87(2)(b) stated that there was no way for him to have known that his taillight was not operating properly, but he repaired the taillight on March 15, 2010.

§ 87(2)(b)'s vehicle was held at the 113th Precinct. § 87(2)(b) stated that he believes Sgt. Bracero stole his vehicle and should not have taken it from his home. Upon his release, § 87(2)(b) received multiple vouchers, including one for his car. He was informed by Sgt. Bracero, however, that his vehicle was to remain held for the purposes of arrest evidence. § 87(2)(b) has since received his vehicle, and stated that it was released by the District Attorney. § 87(2)(b) received additional vouchers for his property, but stated that not all of his possessions were vouchered for or returned to him. Of his missing property, § 87(2)(b) provided a list of the missing items, including nasal spray, approximately \$8.00 to \$25.00 in change that he kept in his vehicle, two chapsticks, keys for his wheel and chrome rims, two Nextel phones, one T-Mobile phone, and a car phone charger for a Blackberry Curve, 8620 model. § 87(2)(g)

§ 87(2)(b) stated that he and § 87(2)(b) are considering pursuing civil litigation. Although they have not yet filed a Notice of Claim, § 87(2)(b) and § 87(2)(b) have contacted their attorney, § 87(2)(b)

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black female who is 5'9" and 190 pounds with dyed blonde hair and brown eyes.

CCRB Testimony

On March 15, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 7a-d). § 87(2)(g)
§ 87(2)(b). On March 4, 2010, at approximately 10:20pm, § 87(2)(b) was in her bedroom, located at § 87(2)(b) in Queens. § 87(2)(b) observed lights outside the window, prompting her to go outside.

Upon exiting her home, § 87(2)(b) observed two uniformed officers, identified through the investigation as PO Burt Antoine and Sgt. Robert Bracero of the 113th Precinct, standing with § 87(2)(b) who was handcuffed, next to his vehicle. § 87(2)(b) described PO Antoine as a black male, who was approximately 5'5" to 5'6" with a slim to muscular build, and appeared to be in his late twenties. § 87(2)(b) stated that PO Antoine also appeared to have a darker complexion or rash around his mouth. § 87(2)(b) described Sgt. Bracero as a white or Hispanic male who is approximately 5'11" with a medium build and appeared to be in his early thirties. Sgt. Bracero was bald in front with straight brown hair in back. At no time did § 87(2)(b) observe an officer point their gun or remove their asp. Sgt. Bracero and PO Antoine were both yelling and cursing at § 87(2)(b) but § 87(2)(b) was unable to recall the specific context in which they used profanity.

§ 87(2)(b) approached and asked the officers what was happening and repeatedly asked "What's the charge." PO Antoine, ignored § 87(2)(b)'s questions and Sgt. Bracero yelled at her, "You're making this worse, get back on the stairs or you'll be arrested." § 87(2)(b) complied and returned to the front steps of her home. Sgt. Bracero and PO Antoine told § 87(2)(b) to be still and to not move, but § 87(2)(b) stated that § 87(2)(b) was not resisting, but was only telling the officers that the handcuffs were painful. While in standing in the driveway, § 87(2)(b) requested the names and shield numbers of PO Antoine and Sgt. Bracero, which they provided to her. § 87(2)(b) stated that Sgt. Bracero's shield number was "59."

Approximately five to seven of § 87(2)(b)'s neighbors formed a crowd to witness the incident. Two additional unmarked four-door sedans, one dark burgundy and the other possibly navy blue, arrived at the location. § 87(2)(b) observed approximately eight to nine white male officers dressed in plain clothes, specifically sweatshirts and jeans, exited the vehicles. A marked vehicle also appeared, and two white male uniformed officers exited. § 87(2)(b) was unable to provide any further physical descriptions of these additional officers. The additional officers assisted PO Antoine and Sgt. Bracero in pushing § 87(2)(b) towards the marked patrol car. § 87(2)(b) was unable to see where the officers made physical contact with

§ 87(2)(b) who was stumbling as he was pushed, but § 87(2)(b) stated that he did not resist or react physically. § 87(2)(b) stated that the officers appeared to grab § 87(2)(b) anywhere where they were able to grasp him.

§ 87(2)(b) and her neighbors approached the officers as they pushed § 87(2)(b) towards the patrol car. While § 87(2)(b)'s neighbors stood within five feet of the officers, and yelled at them, "Stop" and "Let him go," § 87(2)(b) approached in an attempt to get a telephone number from her husband, who had advised her to call § 87(2)(b) a retired detective of the 103rd Precinct. § 87(2)(b) stood next to Sgt. Bracero and again asked what § 87(2)(b) was being charged with. Sgt. Bracero again instructed § 87(2)(b) to get back on her steps, with which she complied.

§ 87(2)(b) stated that she and § 87(2)(b) have contacted an attorney, § 87(2)(b) and are considering pursuing civil litigation. She added that she has also started a petition against racial profiling on Change.org, in which she included the names and shield numbers of PO Antoine and Sgt. Bracero. She further noted that she has sent this petition to the Obama administration, Bloomberg administration and New York State officials.

Attempts to Contact Civilians

§ 87(2)(g)
[REDACTED]

NYPD Statement(s):

§ 87(2)(g)
[REDACTED]

NYPD Document(s)

Arrest Report

§ 87(2)(a) 160.50, § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The report indicates that force was used, specifically in the form of a handgun, and indicates that it was used to restrain, control, and remove § 87(2)(b) (encl. 8).

Property Vouchers

Between March 5, 2010 and March 7, 2010, a total of seven property vouchers were issued to § 87(2)(b) pursuant to his arrest on March 4, 2010, including property voucher § 87(2)(b) for his vehicle. § 87(2)(b) was also issued property vouchers, § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) for numerous possessions. All of the vouchers list PO Burt Antoine as the arresting officer (encl. 9a-g).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]

Civilian(s) CCRB History

- [§ 87(2)(b)] has filed the following CCRB complaints:
 - [§ 87(2)(b)]
[redacted]
[redacted]
- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. 3b).

Subject Officer(s) CCRB History

- PO Burt Antoine has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 2a).
- Sgt. Robert Bracero has been a member of the service for 10 years and there are no substantiated CCRB allegations against him (encl. 2b)

Conclusion

Identification of Subject Officer(s)

[§ 87(2)(b)] and [§ 87(2)(b)] both identified PO Antoine and Sgt. Bracero as officers involved in the incident. [§ 87(2)(b)] stated that she requested the officers' names and shield numbers during the incident, and that they complied in providing their information to her. PO Antoine's name and shield number were also indicated on the arrest report (encl.), and on the property vouchers given to [§ 87(2)(b)] upon his release from custody (encl.). [§ 87(2)(b)] alleged that both PO Antoine and Sgt. Bracero collectively spoke discourteously towards him. [§ 87(2)(g)] [§ 87(2)(b)] specified that PO Antoine was the officer who allegedly pointed his gun, [§ 87(2)(g)] [§ 87(2)(b)] specified Sgt. Bracero as threatening him with the use of force, [§ 87(2)(g)] [redacted]

Investigative Findings and Recommendations

Allegations Not Pleaded

[§ 87(2)(b)] alleged that Sgt. Bracero instructed her to step back or she would be arrested.
[§ 87(2)(g)] [redacted]
[redacted]
[redacted]
[redacted]
[redacted].

[§ 87(2)(b)] and [§ 87(2)(b)] both stated that officers acted collectively in using physical force against [§ 87(2)(b)] by pushing him towards and into a patrol car. [§ 87(2)(g)] [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Allegation A – Discourtesy: Officers spoke obscenely to [§ 87(2)(b)]

Allegation B – Force: PO Burt Antoine pointed his gun at [§ 87(2)(b)]

Allegation C – Abuse of Authority: Sgt. Robert Bracero threatened [§ 87(2)(b)] **with the use of force.**

§ 87(2)(b) alleged that PO Antoine and Sgt. Bracero screamed at him to “put [his] fucking hands” on the car, and further alleged that PO Antoine pointed his gun at him, while Sgt. Bracero threatened him with the use of force by extending his asp § 87(2)(g)

However, § 87(2)(b) acknowledged that he was noncompliant throughout the incident. Although § 87(2)(b) observed PO Antoine and Sgt. Bracero signal for him to stop his vehicle, he was noncompliant and led the officers to pursue him in his vehicle approximately nine blocks to his home. Upon stopping his vehicle, § 87(2)(b) admittedly reached in the center console and immediately exited the vehicle.

§ 87(2)(g)

An officer’s use of profanity does not constitute misconduct when used during a stressful street encounter to gain compliance NYPD v. Court, OATH Index No. 79627/ 04 (encl. 1a-i).

§ 87(2)(g)

NYPD v. Gliner iterates a broad standard for the acceptable drawing and point of a firearm, stating that “an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety” NYPD v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000) (encl. 1j-o) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team: 6

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Investigator: _____
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Supervisor: _____
Title/Signature Print Date

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